

**In the United States District Court
For the Southern District of Texas
Houston Division**

Joseph Moise

§
Plaintiff §
§

Civil Action No.

Vs

§
§
§
4:10-cv-01288

Escapes!, Inc., Ana Lynn and other
unknown agents

§
§
Defendants §

**Certificate in Removed Case
Filed by Defendant Escapes!, Inc.**

This Certificate is filed by Defendant Escapes!, Inc. in response to the Court's Order Concerning Removal dated April 26, 2010.

1. Dates on which defendants received notice of summons/complaint

2. Dates on which defendants were served with summons/complaint

As far as Escapes! is aware, Escapes! is the only defendant that has been served or for which service of process was ever requested by plaintiff.

Escapes was served on 4/23/2009. That was the date on which Escapes! first received a copy of either the summons or Plaintiff's Original Petition.

3. Citizenship of Defendants

This matter was removed on federal question grounds, and thus this item is inapplicable.

4. Amount in Controversy

This matter was removed on federal question grounds, and thus this item is inapplicable.

5. Reason for removal more than 30 days after initiation of case

Escapes! was served with the Plaintiff's Original Petition on 4/23/2009. The Original Petition did not assert any federal causes of action. At the time the Original Petition was filed, Plaintiff had not asserted any federal law claims, and there was no basis for removal on federal question grounds.

Escapes! received a copy of Plaintiff's Second Amended Petition on 3/26/2010, the same day that it was filed with the Galveston County District Clerk's office.

The Second Amended Petition asserted, for the first time, federal law causes of action. Specifically, the Second Amended Petition asserted a new federal question causes of action:

- 42 U.S.C. 1981a. *See*, Plaintiff's Second Amended Petition, Section V (1st paragraph) and Section IX (3rd paragraph).
- Denial of "equal protection" "in violation of the constitution and laws of the United States." *See*, Plaintiff's Second Amended Petition, Section VI (3rd paragraph).

On 4/14/2010, Escapes! received a copy of Plaintiff's Third Amended Petition, which continued the federal law claims from the Second Amended Petition and also adds additional federal question causes of action. The Third Amended Petition raises the following federal law claims:

- 42 U.S.C. 1981a. *See*, Plaintiff's Third Amended Petition, Section V (1st paragraph). This federal claim is continued from the Second Amended Petition.
- Denial of "equal protection" "in violation of the constitution and laws of the United States." *See*, Plaintiff's Third Amended Petition, Section VI (3rd paragraph). This federal claim is continued from the Second Amended Petition.
- Title II of the Civil Rights Act of 1964, 42 USC 2000a *et seq.* *See*, Plaintiff's Third Amended Petition, Section VI (6th paragraph). Newly asserted in the Third Amended Petition.
- Title VII of the Civil Right Act of 1964, 42 USC 2000e *et seq.* *See*, Plaintiff's Third Amended Petition, Section VI (6th paragraph). Newly asserted in the Third Amended Petition.¹

Escapes! filed its removal notice with this Court on 4/21/2010 and thus less than thirty days after Plaintiff first filed any pleadings asserting a federal cause of action.

6. Diversity removal cases pending more than one year

This matter was removed on federal question grounds, and thus this item is inapplicable.

7. Defendants served prior to removal, but not joining in the removal

As far as Escapes! is aware, Escapes! is the only defendant that has been served. The Galveston County District Clerk reports that no citation was ever issued for

¹ Escapes! will, at an appropriate time, demonstrate to the Court that there is no possible application of Title VII in this matter in that Plaintiff was neither employed by Escapes! nor sought employment with Escapes! Additionally, Escapes! is prepared to show that any such claims would be time-barred in any event given that Plaintiff filed no charge of discrimination with the EEOC. By filing this certificate in response to the Court's 4/26/2010 Order Concerning Removal, Escapes! is not waiving its right to seek relief under Rule 12(b)(6). Escapes! similarly intends to challenge other of the federal and state law claims.

any other defendant. Escapes! is not otherwise aware that any other defendant has been served.

8. Citizenship of the defendants

This matter was removed on federal question ground, and thus this item is inapplicable.

Respectfully submitted,



Robert C. Rice
Texas Bar Number 16833990
S.D. Texas ID Number 008191
Attorney in Charge for
Defendant Escapes!, Inc.

Rice & Associates
1010 Lamar, Suite 1530
Houston, TX 77002
(713) 655-9090
(713) 655-9191 fax

Certificate of Service

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded by Fax and by certified mail, return receipt requested to the counsel listed below on May 19, 2010:

Mr. Kurt G. Clarke
Attorney at Law
6200 Savoy Drive, Suite 733
Houston TX 77036

Fax: 713-779-6668



Robert C. Rice